

OGC Has Reviewed

OGC - 6219

From 1 --

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This Office is of the opinion that [] claim for per diem for the period of his TDY in Washington during home leave erroneously was disallowed. In OGC opinion 54-3, dated 10 Sept. 1954, we pointed out that the major consideration in determining whether an employee had consummated his PCS transfer was that of whether he had assumed the duties of his new station. [] informs us that, during the period of TDY in question, he performed duties which were not related to his PCS assignment in HQ. This being so, we are of the opinion that he may be paid per diem for this period without regard to the rule against the payment of per diem at a PCS station.

Nor can we agree that Elkin, N.C., correctly was designated as his home leave point. Place of residence, for purposes of home leave, as elsewhere in the law, is a factor of the circumstances which make up "residence" in the technical sense. All things considered, we are of the opinion that Hinsdale, Ill., properly may be considered as his residence for the purpose here. Principal among our considerations is the one that it is the place at which he, as the principal involved, i.e., the employee, has the greatest number of personal ties and reasons for going. We therefore believe him to be entitled to all the transportation costs involved insofar as they do not exceed (a) the cost of the travel for himself and his dependents from the port-of-entry into the U.S. to Hinsdale, Ill., and to Wash. D.C., and (b) the cost of the travel for himself from Elkin, N.C., to D.C., and to Hinsdale, Ill.

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20 July 1956

MEMORANDUM FOR: Chief, Finance Division

THRU : OGC
SSA-DD/S

SUBJECT : Re-claim for Home Leave Travel

25X1A6A 1. Reference is made to my travel claim for the period 4 December 1955 to 31 January 1956 in which I claim reimbursement for home leave travel from [redacted] to Chicago, Illinois via Elkin, North Carolina and Washington, D. C.

2. I have received an administrative audit difference statement (attached hereto) indicating that reimbursement on the travel claim was allowed only to Elkin, North Carolina and that per diem for TDY in Washington, although authorized in my orders, was disallowed. The reason for disallowance was stated to be that I had "elected" to travel in Elkin and that arrival in Washington represented arrival at a PCS station after home leave. I believe this action was incorrect and due to insufficient information.

25X1A6A 3. My original travel orders authorized transportation from [redacted] to San Antonio, Texas for home leave and return to Headquarters for PCS. Travel was performed from [redacted] to New York, to Elkin, North Carolina, to Washington, D. C. for TDY, to Hinsdale, Illinois for home leave and return to Washington. My wife and children accompanied me only as far as Elkin, North Carolina and rejoined me in Washington after I returned from Hinsdale, Illinois. Since I did not travel to San Antonio as authorized by my orders, reimbursement for travel must be computed on the basis of constructive cost. To do so a "yardstick" is necessary.

4. The question in determining the "yardstick" appears to be one of residency. For this determination the following is submitted:

(a) San Antonio is my home of record. It is the city in which I maintain bank and security accounts. It is the only place where I have voted or have paid city and state taxes as a resident. Nevertheless at the present time I do not own or maintain real property there nor do I have blood relatives in San Antonio.

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(b) Elkin, North Carolina is the home of my wife's father and mother. This has been their home only since my father-in-law's retirement.

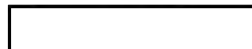
(c) Hinsdale, Illinois is the home of my mother and sister and her children. They are my closest blood relatives.

(d) All of my other blood relatives are located in the mid or southwest.

5. In view of this information it is obvious that while none of the places listed would fully qualify as a residence, San Antonio comes closest since I maintain certain interests there. This in itself, however, may not be conclusive. Between the other points visited, the major difference lies in the fact that my blood relatives reside in Hinsdale; I have none in Elkin. In the Chicago area I have old friends, in Elkin I have acquaintances. Thus it would appear that Hinsdale, Illinois would be the logical home leave point if so elected.

6. On the basis of the above, it is requested that the claim be approved using the constructive cost of travel from New York to San Antonio, Texas and return or from New York to Hinsdale, Illinois and return. In either case the sum claimed amounts to considerably less than the constructive cost.

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Attachment:

Administrative Audit Difference Statement, 1 copy

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